

LCI posits that the 1996 Act *requires* the establishment of such standards. While many details concerning ongoing performance of interconnection obligations will be decided by state regulators, the Commission must establish initial standards that define ILEC obligations in providing effective interconnection and reliable service to their competitors.

Most importantly, the Commission must establish as a broadly applicable principle that ILECs must provide competitive carriers with service that is identical in quality to that provided to their affiliates and their end user customers. This standard should apply to: 1) service reliability standards and other measures of performance; 2) response to requests for new services, and repair of existing circuits; 3) changes in presubscribed interexchange carrier designations; 4) billing and service order processing; and 5) availability of facilities and deployment of new technologies. The Commission should expressly require that ILECs provide the same quality of service to competitive carriers that they provide to their customers and to their affiliates or partners.

In addition, the Commission should impose some specific requirements as well. In particular, the Commission should require that ILECs provide a Firm Order Commitment ("FOC") date to carriers that request service. As LCI discusses above, some ILECs have refused to commit to providing service requested by LCI by a date certain, even though they routinely provide such FOC dates to other customers. As a result of this refusal, LCI has been unable to provide its customers with a projected date for the provision of its services. Commitment to provide service by a date certain is a fundamental requirement for a responsible business, and

competitive carriers are severely disadvantaged when they are unable to provide such information to their customers as a result of ILEC intransigence.

Similarly, the Commission should require ILECs that have experienced service outages or other errors that impact competitive carriers to conduct an investigation and to report the source of the problem in writing within 30 days of a request by an affected carrier. As LCI's experience with US West (discussed in § II(B)(1), *supra*) makes clear, the Commission cannot rely on ILECs to provide such information voluntarily. It is essential that ILECs make such information available to affected carriers in order to minimize service disruptions and increase network reliability.

Finally, the Commission must establish penalties for ILECs that fail to comply with the nondiscrimination provisions of the 1996 Act. In light of the undisputed incentive and ability of ILECs to discriminate in order to disadvantage competitors -- as illustrated in the discussion of LCI's experience. above -- it is clear that, unless the Commission's rules have "teeth," compliance with the 1996 Act's nondiscrimination provisions cannot be enforced. The Commission cannot rely on the formal complaint process under § 208 of the Act, or on litigation before state courts or regulatory commissions to enforce the 1996 Act's nondiscrimination provisions; such action would simply force the competitive carriers that have already been victimized to incur additional legal fees and to expend additional scarce resources. Instead, the Commission should establish a range of fines that apply upon findings that ILECs are providing

inferior service to interconnecting carriers.³⁰ These measures may, of course, be supplemented by the relevant state regulatory body, as it deems appropriate.

4. The Commission must prescribe the reporting and publication of performance standards in order to enforce the nondiscrimination provisions of section 251.³¹

As discussed above, the establishment of national standards is required by the nondiscrimination requirements of § 251(c)(2)(D) and § 251 (c)(3) for interconnection and access to unbundled network elements. Yet such standards are meaningless if the Commission and interested parties are unable to detect ILEC compliance. In order to enforce such standards -- and in order to comply with the nondiscrimination provisions of the 1996 Act -- the Commission must require that ILECs submit uniform and regular reports that demonstrate the quality of service that they provide to customers, competitors, and affiliates or partners. Absent such reporting, carriers that have been subject to discriminatory substandard service will be forced to support claims of discrimination through the discovery process of formal litigation. Such action would impose undue delay and excessive and unnecessary costs on competitive carriers seeking to enforce the 1996 Act.

³⁰ As LCI discusses below, the imposition of reporting requirements on ILECs will allow the Commission and interested parties to identify discrimination in service standards, and will eliminate the need for extensive litigation to determine when a fine is warranted.

³¹ Responds to NPRM ¶ 79.

LCI strongly urges the Commission to require ILECs to submit quarterly reports that list the following information:

- standard deployment intervals for new service orders
- success rate in meeting Firm Order Commitment Dates
- intervals for "rolling over" ILEC-provided circuits to competitors
- mean time to repair impaired circuits
- the number of trouble reports received
- confirmation of receipt of trouble reports to reporting party
- explanation of causes for service outage
- denials of service request due to lack of facilities
- mean time to implement Presubscribed IXC changes
- mean post-dial delay

These data should reflect service provided to ILEC customers, competitive carriers and any affiliate or partner of the ILEC. The reports should be submitted quarterly in a standardized format, and should be made available to the public immediately upon filing.

C. The Commission Must Prohibit ILEC Attempts To Establish Unreasonable Preconditions To Interconnection Negotiations.

The Commission has requested comment on the need to prohibit ILEC actions that may inhibit negotiation of interconnection agreements.³² LCI's recent experience with a number of ILECs demonstrates that such Commission action is essential. For example, LCI's recent attempts to negotiate interconnection arrangements with BellSouth have been delayed following BellSouth's insistence that LCI sign a nondisclosure agreement. The agreement would prohibit LCI from disclosing any discussions or agreements related to the negotiations to

³² NPRM at ¶ 47.

any state or federal regulatory, judicial or administrative agency. Such restriction is obviously unreasonable, yet BellSouth's insistence on such an agreement effectively has prevented interconnection negotiations between LCI and BellSouth from progressing.

Bell Atlantic has proposed a "bona fide" request process for unbundling elements of its network. Under the Bell Atlantic proposal, carriers that wish to request new unbundled network elements must accompany their request with a commitment to purchase the element from Bell Atlantic.³³ This process requires a requesting competitive carrier to commit to purchasing before Bell Atlantic has established a price for the element. Such a commitment is patently unreasonable, and is not required of any other customer seeking new or unique service arrangements from Bell Atlantic. The Commission should expressly prohibit the unilateral imposition of such requirements by LECs.

D. The Commission Should Establish A "Fresh Look" Period To Permit New Entrants To Compete With ILECs.³⁴

The interconnection, unbundling and resale provisions of the 1996 Act will provide competitors with opportunities to provide services that did not exist previously. In anticipation of this development, ILECs currently are actively soliciting their existing customers to sign service contracts of five years or more. This attempt to lock customers in to long term

33 Main Brief of Bell Atlantic - Pennsylvania, Inc., filed in *MFS Intelenet of Pennsylvania, Inc.*, Pennsylvania Public Utility Commission, Docket Nos. A-310203F0002 and consolidated cases, on May 3, 1996, at pages 23-26.

34 Not specifically addressed in NPRM.

contracts before the procompetitive requirements of the 1996 Act are implemented provides ILECs with an unfair advantage over competitors that cannot enter the market until interconnection, network unbundling and resale provisions are in place.

The Commission addressed an identical competitive imbalance that accompanied the introduction of central office collocation by implementing a "fresh look" period,³⁵ and it should take the same action in this proceeding. The fresh look provisions previously adopted by the Commission permitted customers taking ILEC service under long term contracts to terminate those contracts without incurring severe termination liability charges for a period of six months after collocation-based competition became available in their service area. In adopting its fresh look policy, the Commission stated that:

Our goal in mandating expanded interconnection has been to remove the roadblocks that may have prevented long distance carriers and their customers from reaping the benefits of access competition. The existence of certain long-term special access arrangements with excessive termination liabilities prevents customers from obtaining the benefits of greater access competition for a significant period. We find that there is a need for a limited fresh look opportunity to allow eligible customers to assess the new alternatives available in a more competitive market.³⁶

The identical concerns accompany the introduction of competition in the local services markets.

The ability of customers to obtain the full benefits of competitive local service should not be

35 *Expanded Interconnection With Local Telephone Company Facilities*, 8 FCC Rcd 7341, ¶ 12 (1993).

36 *Expanded Interconnection with Local Telephone Company Facilities*, 8 FCC Rcd 7341, para 12 (1993) (footnote omitted).

prejudiced because ILECs enticed the customers into long-term contracts before competitive local services were available. The Commission should therefore adopt a national fresh look policy governing local services.

III. PROVISIONS OF SECTION 252

A. Mutual And Reciprocal Compensation Under Section 252(d)(2) Must Be Interpreted Consistently With Section 251.

The Commission correctly notes that “incumbent LECs have vastly superior bargaining power in negotiations for mutual termination.”³⁷ As a result, it is incumbent upon the Commission to establish unequivocally the standards that will apply to reasonable reciprocal compensation arrangements established by long distance carriers, and to interpret the 1996 Act in a way that eliminates conflict among various of the Act’s provisions and eliminates the possibility ILECs will discriminate against particular classes of carriers.

The Commission seeks comment on whether a conflict exists in the pricing standards of § 252, and whether it is necessary to bifurcate the term “interconnection” to distinguish between the facilities and equipment that physically link an ILEC and competitive carrier network, and the transport and termination functions that are accomplished through such linkage.³⁸ In fact, the application of reasonable cost standards and the clarification that the 1996

³⁷ NPRM at n.19.

³⁸ NPRM at ¶ 54.

Act does not discriminate against classes of carriers eliminates any appearance of conflict and avoids the need for a tortured definition of the term “interconnection” as used in § 251.

Section 252(c)(2) requires that rates for reciprocal compensation established pursuant to § 251(b)(5) recover the “additional costs of terminating such calls.” This pricing standard will be met by the adoption of a TSLRIC pricing standard for mutual compensation. If, as LCI strongly urges, the Commission adopts a general TSLRIC pricing standard for interconnection and unbundled rate elements, there will be no conflict between the pricing standard of § 251(b)(5) and the provisions of § 251. There will also be no need to dissect the term “interconnection” as used throughout these sections.

Moreover, in order to protect competitive carriers from potential discrimination, the Commission should ensure that ILECs apply the identical costing standards uniformly among the services that competitive carriers will obtain. Subject to cost-based differences, carriers should pay the same rate for the same facility, service or functionality obtained from the ILEC, whether it is interconnection pursuant to § 251(c)(2) and § 252(d)(1), unbundled network elements under § 251(c)(3) and § 252(d)(1), or reciprocal compensation under §§ 251(b)(5) and 252(d)(2).³⁹

³⁹ As discussed under §II(A), *supra*, long distance carriers are fully empowered to obtain mutual compensation arrangements from ILECs.

B. Under § 252(i), ILECs Should Be Required To Tariff Rates And Terms For All Unbundling And Interconnection Agreements, And To Make Them Available To All Telecommunications Carriers Without Restriction.

The Commission solicits comment on the implementation of the requirement under § 252(i) that negotiated interconnection arrangements are universally available to all carriers.⁴⁰ LCI urges the Commission to support mandatory tariffing at the state level of all ILEC rates, terms and conditions for interconnection and mutual compensation agreements, including agreements that were concluded prior to the signing of the 1996 Act. In addition, on a going-forward basis, ILECs should be required to incorporate any newly-negotiated interconnection or mutual compensation agreements in their tariffs within 15 days of concluding such an agreement with another party. This approach avoids the need for the Commission, state regulators, or interested carriers to monitor dozens or hundreds of individual contracts, and is by far the most effective means of making interconnection arrangements universally available.

In addition, the Commission should clarify that such interconnection is available to all carriers. As LCI discusses throughout these comments, there is no support in the 1996 Act or in public policy for excluding any class of carrier from the procompetitive interconnection, network unbundling and resale opportunities established by the 1996 Act. In addition, any requirement that a carrier must demonstrate that it is "similarly situated" to another carrier as a precondition to obtaining interconnection agreements will result in endless litigation that will only inflate the cost of interconnection for competitive carriers and unduly burden the resources

⁴⁰ NPRM at ¶¶ 269-72.

of the Commission and state regulatory bodies. The Commission should therefore require that all interconnection and mutual compensation arrangements are fully disclosed in ILEC tariffs and are available to all carriers without restriction.

C. The Commission Must Promulgate Specific Standards To Ensure Reasonable Pricing Of ILEC Wholesale Services.⁴¹

As the Commission recognizes, resale will be a primary vehicle by which both non-facilities based and facilities based carriers will initially enter local markets.⁴² Indeed, the prominent place given to resale in the 1996 Act is fully consistent with the Commission's long-established findings that unrestricted resale of telecommunications services serves the public interest.⁴³ In order to implement the 1996 Act's provisions that promote resale of ILEC services, the Commission must prescribe pricing rules that will ensure that ILEC wholesale rates are just and reasonable.

Section 251(c)(4) requires ILECs to establish wholesale rates to promote resale. Section 252(d)(3) defines wholesale rates as excluding "marketing, billing, collection, and other costs that will be avoided by the local exchange carrier." The Commission should define specifically the "other" costs that must be removed from ILEC retail rates in order to comply with the Act's avoided cost standard.

⁴¹ Responds to NPRM ¶¶ 269-79, 126-33.

⁴² NPRM at ¶ 10.

⁴³ *E.g., Resale and Shared Use of Common Carrier Services*, 60 FCC 2d 588 (1977).

In particular, the Commission should clarify that *all* ILEC costs associated with marketing and customer services must be eliminated in computing ILEC wholesale rates. This includes the direct costs associated with sales, marketing, product management and customer service,⁴⁴ as well as the common and overhead costs (for land and building, office equipment, legal and executive services) that follow those direct costs. Moreover, the Commission should require that ILECs demonstrate that total company overheads (applied through the application of annual cost factors or by other means) are not disproportionately loaded onto wholesale services.

The Commission should require that, once these costs associated with retail services are quantified, ILECs compute an average wholesale reduction that will apply to all retail services across-the-board. Any ILEC seeking to establish lesser wholesale reductions for any category of service should be required to justify the proposed rates with detailed cost data. The Commission should establish a presumption that any such divergence from uniform wholesale reductions is unreasonable, and the ILEC should bear a substantial burden of proof to support their proposals.

By way of example, the differential between retail and wholesale rates in the competitive long distance market ranges from 50% - 80% today. This significant discount level reflects real cost differences imposed by market forces. ILEC wholesale rates that fail to reflect a

⁴⁴ In particular, costs reflected in Uniform System of Accounts categories 32.6610 (Marketing), 32.6611 (Product Management), 32.6612 (Sales), 32.6613 (Product Advertising) and 32.6623 (Customer Services) should be excluded.

similar reduction from retail rates must be considered inherently suspect, and subject to demanding cost scrutiny.

D. **The FCC Should Establish Nationwide Wholesale Reductions
To Facilitate Local Exchange Resale Under Section 251(c)(4).**⁴⁵

In conjunction with the Joint Board, the Commission should establish wholesale percentage reductions for ILEC service rates under Sections 251(c)(4) and 252(d)(3) consistent with the approach recommended above for the establishment of TSLRIC-based rate ceilings for interconnection and network elements under Section 251(c).⁴⁶ In this case, the Commission already has the necessary data in the form of the ILECs' ARMIS reports. Certain accounts are dedicated entirely to retail activities, and thereby must be regarded as avoided costs for purposes of deriving the wholesale reduction. For accounts which are only partly comprised of retail costs, the Joint Board and the Commission should develop reasonable allocation factors, such as the proportion of wholesale to overall revenues, to determine what amount in each account is related to retail activities. Using the ARMIS data, the Joint Board and the Commission should establish a wholesale reduction factor that will apply on a nationwide basis under Sections 251(c)(4) and 252(d)(3). LCI urges the FCC to establish the same timetable for promulgating this reduction as with the TSLRIC-based rate ceilings -- an initial recommendation by the Joint Board no later than November 8, 1996 with a final decision by the Commission promptly thereafter.

⁴⁵ Responds to NPRM ¶¶ 269-70, 126-33.

⁴⁶ *See* § II(B), *supra*.

The establishment of wholesale reductions is necessary to prevent the ILECs from frustrating the development of cost-based wholesale rates at the state level by withholding relevant data or producing biased studies. In order to ensure that the ILECs cannot effectively write Section 251(c)(4) out of the statute, the Commission and the Joint Board should establish a wholesale reduction factor at the high end of the range of reasonable figures supported by ARMIS data. This will minimize the number of situations where an ILEC's cost structure would support a higher wholesale reduction than the nationwide level, thereby giving the ILEC strong reasons to delay providing reliable data to its state regulatory commission as long as possible. Further, it should always be reasonable for a state commission to establish a wholesale reduction higher than the nationwide level, as such reductions are presumptively "just and reasonable." In cases where a state regulatory commission has reliable data demonstrating that other adjustments are justified in its state, it should be able to modify the wholesale reduction factor for good cause shown. In this manner, a nationwide wholesale reduction factor will not derogate from the statutory role of state regulatory commissions in arbitrating and approving co-carrier agreements or establishing local exchange wholesale rates. Without such reduction factors, ILECs will be able to defeat the 1996 Act and prevent new carriers from entering the local market through the resale of local exchange retail services.

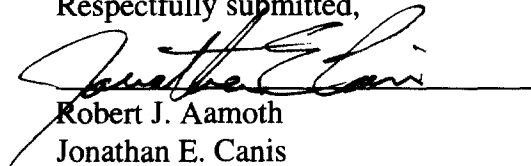
II CONCLUSION

As LCI discusses in these comments, ILECs have the incentive and the demonstrated ability to delay, to provide substandard service, and to encourage unnecessary

litigation in response to service requests by long distance carriers. In order to promote the public interest in a robustly competitive communications markets, the Commission must take this experience into account in implementing the interconnection and local competition provisions of the Telecommunications Act of 1996. LCI therefore urges the Commission to prescribe explicit terms, conditions and pricing standards governing ILEC interconnection and network unbundling, and to establish performance standards and reporting requirements to ensure that ILECs provide service on a nondiscriminatory basis to competitive carriers, in conformance with the discussion contained herein.

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May 16, 1996

ATTACHMENT A

TERMINATION Section XX

* B. Notwithstanding Paragraph A above, either Party may at its sole discretion, and with eight (8) months notification to the other Party, terminate this Agreement in its entirety. SWBT agrees that it will not exercise its right to terminate without cause this Agreement prior to January 1, 1998 set forth in this Paragraph B so long as: 1) SWBT continues to bill for an unaffiliated interchange carrier and offers the same billing services under the same terms and conditions as those set forth herein; 2) the Customer pays its obligations to SWBT as they become due, including, but not limited to any amounts under this Agreement, any access charges due SWBT, any amounts due to SWBT under applicable tariffs, or otherwise.

C. Notwithstanding Paragraph A and B above, if the Customer reasonably objects to SWBT's assignment of this Agreement to an affiliate pursuant to Section XI within thirty (30) days of notice of such assignment, the Customer may give notice to terminate this Agreement without liability to SWBT for future minimum purchase of service obligations. SWBT will continue billing for the Customer either on its own or through the affiliate for up to six (6) months from the date of such notice.

ASSIGNMENT Section XI

Any assignment, in whole or part, other than an assignment by SWBT to an affiliate, with thirty (30) days advance written notice, by either Party of any right, obligation, or duty, or of any other interest under this Agreement, without the written consent of the other Party shall be void. Such written consent shall not be unreasonably withheld or delayed. All obligations and duties of a Party to this Agreement shall be binding on all successors in interest and assigns of such Party. If the Customer reasonably objects to SWBT's assignment of this Agreement to an affiliate, the Customer shall have the termination rights described in Section XX C.

- *Small Service*

CERTIFICATE OF SERVICE

I, Michele A. Depasse, hereby certify that the foregoing "*Comments of the LCI International Telecom Corp.*" was sent, this 16th day of May 1996, by U.S. first class mail, postage prepaid, to the following:

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